

May 29, 2012

Via e-file at puc.filingcenter@state.or.us

Filing Center
Public Utility Commission of Oregon
550 Capitol Street N.E., Suite 215
Salem, Oregon 97301-2551

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation of Call
Termination Issues
Docket No. UM 1547

Dear Filing Center:

Attached for filing is an original and three copies of the Reply Comments of Integra Telecom in connection with the above-referenced docket. Also attached is a Certificate of Service.

Sincerely,



Kim K. Wagner
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Integra Telecom
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Enclosures

cc: Service List (via email)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DOCKET NO. UM 1547

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation into Call Termination Issues

REPLY COMMENTS
OF INTEGRA TELECOM

Integra Telecom of Oregon, Inc. and its Oregon affiliates¹, (collectively, “Integra”), respectfully submit the following reply comments in response to the April 23rd Staff’s Comments.²

Introduction

Integra commends Staff for undertaking this review of a difficult and complex issue regarding call termination. As described in Staff’s Comments, the call termination problem is often caused by a third party interexchange carrier (“IXC”) and the carriers that the IXC subcontracts with in order to minimize call termination costs. Carriers such as Integra are not directly connected to every company within the state of Oregon, and in many cases Integra relies on IXC networks in order to complete intrastate (and interstate) toll calls originated by Integra’s customers. It is in Integra’s interest that its end user customers are able to complete the calls they originate. Accordingly, Integra supports Staff’s recommendation that the Commission establish rules, similar to those which have been adopted by the FCC, that require IXCs to terminate domestic interexchange calls regardless of destination. Integra also agrees with Staff that the originating carrier ultimately is responsible to assure that its third party provider complete calls as required. As discussed below, Integra has concerns about broad non-discrimination language that might be read to apply more broadly than the call termination problem at issue in this docket. Integra also believes that any rules adopted by the Commission should encourage carriers to work cooperatively toward a resolution of any identified call termination

¹ Eschelon Telecom of Oregon, Inc., Electric Lightwave, LLC., Advanced TelCom, Inc., Shared Communications Services, Inc., Oregon Telecom, Inc., and United Communications, Inc. d/b/a UNICOM.

² Staff’s Comments, In the Matter of Public Utility Commission of Oregon Staff Investigation of Call Termination Issues, Docket UM 1547, April 23, 2012 (“Staff’s Comments”).

problems; but refrain from imposing fines on carriers who are working in good faith to identify and rectify these issues.

Commission Staff makes three recommendations to amend OAR 860-032-0007 (Conditions of Certificates of Authority). The first recommendation is to “prohibit telecommunication service providers from subjecting any particular person, class of person, or locality to any undue or unreasonable prejudice or disadvantage.”³ The second recommendation is to “prohibit blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges.”⁴ The third recommendation is to “make telecommunications service providers responsible for acts, omissions, or failures of their agents or other persons acting for or employed by the carrier.”⁵ Commission Staff recommends amending this rule through an emergency rulemaking proceeding, and Staff indicates that following the rulemaking “Staff plans to pursue investigations of Consumer complaints, with the express intention of levying penalties against carriers that violate these essential call completion principles.”⁶ Integra addresses these three proposals below.

Discrimination Provision is Unnecessary

Staff’s first recommendation to “prohibit telecommunication service providers from subjecting any particular person, class of person, or locality to any undue or unreasonable prejudice or disadvantage,”⁷ is unnecessary, fails to directly address the problem, is overly broad and could result in unintended consequences.

Staff recommends “that a rulemaking process be initiated to expressly prohibit discriminatory practices in the provision of telecommunications service.”⁸ A general non-discrimination provision could be read to apply to all services offered by all carriers throughout the state, which is too broad. Carriers serve unique customer classes, with unique product sets, in unique areas of the state. Overly broad language regarding a carrier’s obligation to serve all customers in Oregon could undermine competition by placing requirements on carriers that are impossible to meet. Staff’s conclusion that “public interest necessitates that carriers be required to provide equivalent, non-discriminatory service to rural areas,”⁹ and that carriers should be “required to provide service to *all localities* on a non-discriminatory basis,”¹⁰ must be limited to the issue of the call completion problem. Further, as Staff points out, broad non-discrimination rules are inconsistent with Oregon Statute.¹¹ In its Declaratory Ruling on this matter the FCC noted that “there may be valid reasons for discrepancies in performance, such

³ Staff’s Comments, p. 10.

⁴ Staff’s Comments, p. 10.

⁵ Staff’s Comments, p. 10.

⁶ Staff’s Comments, p. 11.

⁷ Staff’s Comments, p. 10.

⁸ Staff’s Comments, p. 1.

⁹ Staff’s Comments, p. 8.

¹⁰ Staff’s Comments, p. 8.

¹¹ Staff’s Comments, pp. 7-8.

discrepancies would be subject to examination to determine whether they are *unjustly or unreasonably* discriminatory.”¹²

Certainly the Commission should take actions, such as those addressed in Staff’s second recommendation, which prohibit carrier practices that result in reduced service quality or a failure of calls to terminate across Oregon. However, overly broad non-discrimination language is not necessary.

The Commission Should Prohibit Blocking, Choking, Reducing, or Restricting Traffic

Staff’s second recommendation to “prohibit blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges,”¹³ directly addresses the issue of call termination and should be adopted by the Commission. This provision is consistent with the FCC’s findings that “carriers are prohibited from blocking, choking, reducing or restricting traffic *in any way*, including to avoid termination charges.”¹⁴ This includes actions by interexchange carriers.¹⁵ The FCC also found that, “[i]t is a deceptive or misleading practice... to inform a caller that a number is not reachable or is out of service when the number is, in fact, reachable and in service,”¹⁶ and “that adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services...”¹⁷

The Commission should clarify that these prohibitions apply to intrastate calls as well as interstate calls.¹⁸

Providers are Ultimately Responsible for Failures of Agents

Staff’s third recommendation to “make telecommunications service providers responsible for acts, omissions, or failures of their agents or other persons acting for or employed by the carrier,”¹⁹ is reasonable. However, as is explained below, telecommunications services providers must be afforded an opportunity to investigate

¹² Declaratory Ruling, DA 12-154, In the Matter of Developing an Unified Inter-carrier Compensation Regime and Establishing Just and Reasonable Rates for Local Exchange Carriers, Docket Nos. CC 01-92 and WC 07-135, Released February 6, 2012 (“FCC Declaratory Ruling”), ¶ 14 [emphasis added].

¹³ Staff’s Comments, p. 10.

¹⁴ Declaratory Ruling, ¶ 9 [emphasis added], [footnotes omitted].

¹⁵ Declaratory Ruling, ¶ 9.

¹⁶ Declaratory Ruling, ¶ 13 [footnotes omitted].

¹⁷ Declaratory Ruling, ¶ 14.

¹⁸ See Staff’s Comments, p. 5.

¹⁹ Staff’s Comments, p. 10.

issues, to work with their agents, and to implement remedies prior to the imposition of fines or penalties.

Staff has recognized that the call completion problem “can be a difficult one to identify,”²⁰ and that there is difficulty in “tracing the source of call completion problems...”²¹ A carrier, such as Integra, serving a customer originating an intrastate toll call, may rely upon one or more IXCs to terminate calls on the originating carriers behalf. These IXCs may rely upon multiple “third party services to route calls to local exchanges, where calls are completed...”²² The FCC noted “that many of these call routing and termination problems could lie with underlying routing providers selected by carriers who offer retail long distance services.”²³ The originating carrier may never know that its customer’s call did not complete to its intended party, particularly if the originating carrier’s customer does not report a trouble to the originating carrier. It has been Integra’s experience as the originating carrier, that it becomes aware of a problem only because the terminating party reported a trouble to its carrier or the Commission. As a result, the failure to correct a problem may reflect a lack of knowledge of a particular problem rather than an unwillingness to take action to correct it. Furthermore, the longer it takes for the problem to be reported, the more difficult it will be for the carrier to conduct an investigation and to correct the issue. It also should be noted that the failure of a call to terminate does not consistently occur, as calls may fail to complete in one minute; but complete in the next. This adds to the complexity of tracking the issue.

While Integra supports the FCC’s determination and Staff’s recommendation that “a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination,”²⁴ it is important that the originating carrier be given the opportunity to investigate and attempt to remedy the issue before penalties are levied “against carriers that violate these essential call completion principles.”²⁵ The FCC’s Declaratory ruling regarding the potential for penalties focused on carriers that knowingly or intentionally failed to comply with call termination rules. The FCC clarified, “that a carrier that *knows or should know* that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively *allow these conditions to persist*, may be liable for a violation of section 201 of the Act.”²⁶ The FCC also said, “that it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that *knows or should know* that it is providing degraded service to certain areas to *fail to correct* the problem or to *fail to ensure* that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately,”²⁷ and noted that, “any person who *willfully or repeatedly* fails to comply with any provision of the Act or any rule,

²⁰ Staff’s Comments, p. 1.

²¹ Staff’s Comments, p. 3.

²² Staff’s Comments, p. 4.

²³ Declaratory Ruling, ¶ 7 [footnotes omitted].

²⁴ Declaratory Ruling, ¶ 11.

²⁵ Staff’s Comments, p. 11.

²⁶ Declaratory Ruling, ¶ 11 [emphasis added].

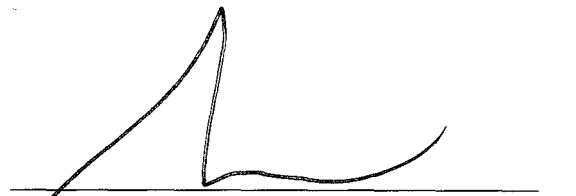
²⁷ Declaratory Ruling, ¶ 12 [emphasis added, footnotes omitted].

regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.”²⁸

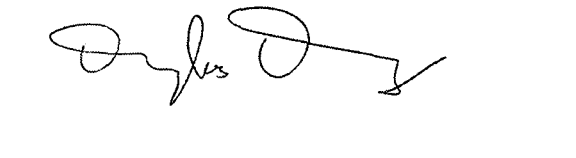
Likewise, any adjustments to this Commission’s rules should focus on rectifying the issue, and not punishing carriers through fines against those carriers that are working in good faith to correct call completion issues that are brought to their attention, particularly when these issues are a result of actions by third party providers and do not represent an attempt by the originating carrier to avoid call termination fees.

Dated this 29th day of May, 2012

Respectfully submitted,



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²⁸ Declaratory Ruling, ¶ 16 [emphasis added, footnotes omitted].

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1547

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

CERTIFICATE OF SERVICE

Investigation of Call Termination Issues

I hereby certify that I filed the attached Reply Comments of Integra Telecom with the
OPUC Filing Center with an original and three copies sent by overnight express delivery to:

Filing Center
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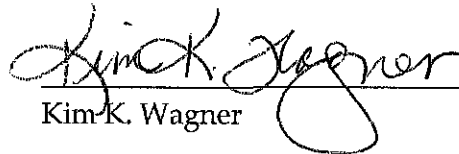
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DATED: May 29, 2012.



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